THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.2985 OF 2003 & 16078, 17626, 20308 AND 24258 OF 2007

DATED: 19-12-2007

WP.No.2985 OF 2003

BETWEEN

Sabbavarapu Apanna, S/o. Late Apanna,
R/o. Aganampudi, Gajuwaka Mandal,
Visakhapatnam District and others.

...PETITIONERS

AND

The Revenue Divisional Officer,
Visakhapatnam and another.

...RESPONDENTS

WP.Nos.16078, 17626, 20308 & 24258 of 2007

BETWEEN

P. Mallikarjuna Kumar, S/o. P. Subba Raju,
R/o. Plot No.255, MLA Colony, Road No.10/C,
Jubilee Hills, Hyderabad and others.

...PETITIONERS

AND

Government of Andhra Pradesh,
Rep. by its Secretary, Revenue
Department, Secretariat,
Hyderabad and others.

...RESPONDENTS

COMMON ORDER:

In all these writ petitions similar questions are involved, as such, they are being disposed of by a common order. Insofar as W.P.No.2985 of 2003 is concerned the petitioners question the notice issued under Section 14(5) of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short 'the Act 1973'). In all other four writ petitions the petitioners question the resumption orders passed under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act 1977), as confirmed in the appeals, on the ground that the resumption of the lands under the Act 1977 is without jurisdiction and in contravention of the provisions contained in the Act 1973.

W.P.No.2985 of 2003:

2. The facts in the instant case are as follows:

(a) The Revenue Divisional Officer, Visakhapatnam issued notice dated 25.01.2003 under Section 14(5) of the Act 1973 calling upon the petitioners to submit explanation within 30 days from the date of communication of the notice as to why the lands assigned in their favour shall not be resumed in accordance with the provisions of sub-section (5) of Section 14 of the Act 1973 read with Rule 10 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 (for short 'the Rules 1974'). The reasons mentioned in the notice for resumption are that the petitioners were granted pattas in respect of the land vested in the Government covered by Sy.No.56(1) and (2) of the Aganampudi Village, Gajuwaka Mandal, Visakhapatnam District but the petitioners/assignees have executed two registered agreement of sales - cum - General Power of Attorney in respect of the said lands in favour of one Namburu Srinivasa

Rao, Project Manager, G.P.R Housing Private Limited, Daba Gardens, Saraswathi Park Junction, Visakhapatnam, for an extent of Ac.26.28 cents in Sy.No.56(1) and (2) of Aganampudi Village vide Document No.2835/2001 dated 10.09.2001 for a total consideration of Rs.28,90,800/- and another extent of Ac.4.46 cents vide Document No.2860/2001 dated 15.09.2001 for a consideration of Rs.4,90,600/-.

(b) The petitioners have authorized the GPA holder to form layout of house sites in the said land and in turn he has got the layout of the house sites approved by VUDA and secured clearance from the Special Officer (Urban Land Ceiling) to sell away the house site plots to intending purchasers and get the sale deeds registered on their behalf. In the registered documents the said lands are neither shown as Government lands nor assigned lands. The said documents go to show that the petitioners have alienated the said lands in favour of Namburu Srinivasa Rao in violation of sub-section (4) of Section 14 of the Act 1973 read with the conditions prescribed under clause (iii) of
sub-section (4) and clauses (a) to (g) of Rule 10 of the Rules.

3. It is the case of the petitioners that the total extent of Ac.30.74 cents in Sy.No.56(1) and (2) was allotted to them by orders of the Tahasildar, Anakapalli vide proceedings dated 12.05.1977 under Section 14(2) of the Act 1973 subject to payment of the sum calculated at 50 times the land revenue in 15 annual instalments and they have paid the said amount stipulated in the conditions of the order of allotment. Since the time period for the installment payment expired sometime in 1992, they acquired absolute title to the land as contemplated under Section 14(2) of the Act 1973. The land allotted to them was surplus land under the Act 1973 and all of them have paid the total amount prescribed within the 15 years, as such, they became absolute owners and therefore, there is no prohibition for alienation of the said lands.

4. It is further stated that previously when the pattas were cancelled vide proceedings of the RDO dated 30.11.1993 on the ground that they have not cultivated the said agricultural lands, they filed W.P.No.6998 of 1999, which was allowed by order dated 08.08.2001 and thereafter the impugned notice dated 25.01.2003 proposing to resume the land on the ground that the petitioners have alienated the said land in violation of Section 14(4) of the Act 1973 has been issued. It is stated that the alienation is not at all null and void within the meaning of Section 14(5) of the Act 1973 and the notice of resumption has been issued only on the ground that the admitted alienation is in violation of Section 14(4) of the Act 1973 and Rule 10 of the Rules 1974. Therefore, in view of the conclusions arrived in the notice even if they submit any explanation to the notice, it is of no avail. It is stated that the impugned notice dated 25.01.2003 itself is illegal, arbitrary and without jurisdiction as there cannot be any restriction restricting them permanently from alienating the said lands. The ambit of the notice issued is beyond the scope and ambit of the provisions contained in Section 14(4) and (5) of the Act 1973 and against the rule of perpetuity; as such, it cannot be said that they have no right of alienation even after lapse of 25 years. Any restriction of permanent nature on the right to sell is not only unreasonable but also contrary to the provisions of the Transfer of Property Act and the Indian Contract Act.

5. (a) Counter has been filed by the Revenue Divisional Officer stating that the petitioners were assigned/allotted/transferred ceiling surplus agricultural lands and one of the conditions of transfer as contemplated under Section 14(4) of the Act 1973 is that the lands shall not be alienated in any manner whatsoever. If there is any such alienation, the said alienation made in contravention of sub-section (4) of Section 14 of the Act 1973 shall be null and void under Section 14(5) of the Act 1973. There is no dispute with regard to the registration of two documents by the petitioners alienating the said

lands in favour of GPR Housing Private Limited and giving GPA in favour of the Project Manager. The contention of the petitioners that they are the absolute owners of the lands and that they have right to alienate the same is without any basis as under Section 14(4)(i) of the Act 1973 any transfer of the land made in favour of the petitioners shall be subject to the condition that the lands shall not be alienated by the transferee/petitioners by way of sale, gift, mortgage, lease or in any manner whatsoever, otherwise, than by way of mortgage in favour of the Government, a Bank or a Cooperative Society, including the land mortgage Bank. Under Section 14(5) of the Act 1973 any alienation effected or other act done in violation of the conditions specified in sub-section (4) shall be null and void and the RDO shall resume the land after giving opportunity to the persons affected on making a representation in this behalf. Under Rule 10(4)(g) of the Rules 1974 all lands allotted or transferred shall be heritable but shall not be transferable, except by way of a mortgage in favour of the Government, a Bank or a Cooperative Society including a Land Mortgage Bank. Under Rule 10(5) where any persons fails to pay any installment due or violates any of the conditions of allotment or transfers, the RDO may after giving an opportunity to the person concerned after making a representation in this behalf within 30 days from the date of communication of the notice, pass an order forfeiting the amount already paid and resuming the land and also authorize any officer not below the rank of a Revenue Inspector to take possession of the said land.

(b) It is stated that in view of the aforesaid provisions, it cannot be said that the petitioners are entitled to alienate the said lands, which were allotted under Section 14 of the Act 1973. The petitioners neither have perpetual right nor absolute right over the said lands in question. The allotment of the lands in favour of the petitioners in terms of Section 14 of the Act 1973 is not absolute or permanent but subject to the condition that the

said lands are not alienable but only inheritable. The contentions of the petitioners that after payment of the instalments within 15 years they acquire absolute ownership and the restriction imposed on them not to alienate is not permanent and that they are entitled to transfer and the transfer made after lapse of 25 years is legal and valid, are all denied contending that the said transfer is in violation of the Act 1973. It is further submitted that the decision of the Apex Court in **SRI MANCHEGOWDA v. STATE OF KARNATAKA**[1] relied on by the petitioners, wherein the prohibition of transfer was for a definite period but not perpetual, the Supreme Court upheld the condition of imposing restriction on such transfer,
has no application, as in the said case there was no permanent prohibition to alienate whereas in the instant case there is a permanent prohibition from alienating the said land.

WP.Nos.16078, 17626, 20308 & 24258 of 2007:

6. The facts in all these cases are similar; therefore, the facts in W.P.No.17626 of 2007 are referred to.

7. Petitioners question the resumption order dated 19.02.2007 passed by the Tahsildar/Mandal Revenue Officer, Shamshabad Mandal, Ranga Reddy District confirmed by the Revenue Divisional Officer, Chevella Division vide order dated 26.07.2007 under the provisions of the Act 1977 as illegal, arbitrary and without jurisdiction and
in contravention of the provisions of the Act 1973.

8. It is the case of the petitioners that they have purchased land of an extent of Ac.12.07 guntas in Sy.No.43 of Kothwalguda Village, Shamshabad Mandal, Ranga Reddy District vide registered sale deeds in 1996 and their vendors have purchased the said lands in 1981 under five registered sale

deeds. Thus, they submit that they are the absolute owners and possessors of the said land. It is further stated that they have set up a Stone factory in the said land after obtaining permission from the concerned departments. While so, the Tahsildar, Shamshabad issued a notice dated 14.03.2005 under Rule 3 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 1977 (for short 'the Rules 1977') alleging that they have contravened the provisions of the Act 1977. It is stated that the said land originally was ceiling surplus land within the meaning of the provisions of the Act 1973 but without considering their explanations dated 25.11.2005 the Tahsildar resumed the said land by the impugned notice against which the appeal filed by them before the Revenue Divisional Office has been dismissed.

9. The petitioners contend that the said land was ceiling surplus land and that there was no permanent restriction prohibiting alienation; therefore, the resumption of the land under the provisions of the Act 1977 is illegal and contrary to the provisions of the Act 1973.

10. A perusal of the resumption order passed by the fourth respondent dated 19.02.2007 goes to show that originally an extent of Ac.2.17 cents was assigned in favour of V. Saudaiah, V. Venkaiah and V. Shankaraiah and an extent of Ac.2.18 cents was assigned in favour of V. Salaiah and V. Chinna Yenkaiah respectively in Sy.No.43 and the said lands have been purchased by the petitioners. The said lands were declared as ceiling surplus lands vide C.C.No.892/W/75 & 854/W/75 and the same were assigned to landless poor vide File No.A7/6505/76 dated 01.07.1978 and admittedly the petitioners were found in possession of the said lands. As per sub-section 2 of Section 3 of the Act 1977 no landless poor shall transfer any assigned lands, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise. Accordingly notice was issued to the

petitioners/purchasers in Form – I on 14.03.2005 for which explanations have been submitted on 25.11.2005 admitting that the petitioners purchased the said land through registered sale deeds.

As the said transfer of the assigned lands is in violation of the provisions of the Act 1977 the said lands were resumed to the Government.

11. Aggrieved by the said order the petitioners preferred an appeal before the Revenue Divisional Officer under Section 4-A of the Act 1977 and the appellate authority considered the contentions of the petitioners that the second petitioner purchased an extent of Ac.3.01 guntas and third petitioner purchased an extent of Ac.3.02 guntas and the remaining land was purchased by the first petitioner vide registered sale deeds and held that they have been possession of the said land in an extent of Ac.12.07 guntas, which is a ceiling surplus land allotted in favour of landless poor and the said purchase is in violation of the provisions of the Act 1977. The contention that the said lands were not assigned but the said lands are patta lands has been rejected holding that as per Rule 10 of the Rules 1974 and Section 14 of the Act 1973 the ceiling surplus land assigned shall be heritable but shall not be alienated or transferred by way of sale, gift, mortgage, lease, or in any manner whatsoever and the lands allotted to the landless poor shall be personally cultivated by the assignee or by any member of his family. Accordingly, it was held that the purchase of the said land and conversion of the agricultural lands into non-agricultural land is a violation of sub-sections (1) and (2) of Section 3 of the Act 1977 and any claim in contravention of the provisions of the Act 1977 is deemed to be null and void. Accordingly, the resumption orders passed by the MRO were upheld by the appellate authority by order dated 26.07.2007.

12. The questions that arise for consideration:

1. Whether the ceiling surplus agricultural lands transferred in

favour of the landless poor persons subject to the condition that the lands shall not be alienated by the transferee permanently prohibits the transferee under Section 14(4) of the Act 1973 from alienating the said lands?

2. Whether the condition on the allottee/transferee to pay, under Section 14(2) of the Act 1973 read with Rule 10(4)(a) of the Rules 1974, a sum calculated at 50 times the land revenue in 15 annual installments from the date of allotment/transfer transforms into an absolute ownership entitling the landless poor to alienate the said land?

3. Whether the allotment/transfer of the ceiling surplus lands on payment of concessional sum at 50 times of the land revenue in 15 annual installments shall be treated as assignment of the land under the provisions of the Act 1977?

4. Whether the ceiling surplus land transferred/allotted in favour of landless poor under the provisions of the Act 1973 and the Rules made thereunder is to be resumed under the Act 1973 alone or under the provisions of the Act 1977 also?

13. To appreciate the aforesaid contentions it is essential to refer the relevant provisions of the Act 1973, the Rules 1974, the Act 1977 and the Rules 1977.

Section 14 of the Act 1973 reads as follows:

"**14. Disposal of land vested in Government:-**

(1) The lands vested in the Government under this Act shall be allotted for use as house-sites for agricultural labourers, village artisans or other poor persons owning no houses or house-sites, or transferred to the weaker-sections of the people dependent on agriculture for agriculture or for purposes ancillary thereto, in such manner as may be prescribed:

Provided that, as far as may be practicable, not less than one half of the total extent of land so allotted or transferred shall be allotted or transferred to the members of the Scheduled Castes and the Scheduled Tribes and out of the balance, not less than two-thirds shall be allotted or transferred to the members of the backward classes, classes of citizens notified by the Government for purposes of Clause (4) of Article 15 of the Constitution.

(2) Every person, to whom the land has been allotted for use as house-site or transferred for the purposes of agriculture or for purposes ancillary thereto, shall pay to the Government within a period of fifteen years from the date of allotment or transfer or within a shorter period at his option, and in such installments as may be prescribed, a sum calculated at fifty times the land revenue payable on such land, subject to a maximum of rs.1,250 per hectare in the case of wet land and Rs.375 per hectare in the case of dry land and on payment of the entire amount such person shall be granted a patta in respect of that land.

Explanation:- Where any land transferred under this sub-section contains any fruit-bearing trees or permanent structures, the transferee shall also be liable to pay the value of such trees or structures calculated in such manner as may be prescribed.

(3) Where any persons fails to pay the sum referred to in sub-section (2) or any installment thereof the Revenue Divisional Officer may, subject to such rules as may be prescribed, resume the lands after giving an opportunity to the person concerned of making a representation in this behalf and the amount already paid by such person to the Government shall be liable to be forfeited to the Government.

(4) Any transfer of the land under this Section shall be subject to:

(i) the condition that the land shall not be alienated by the transferee by way of sale, gift, mortgage, lease or in any manner whatsoever otherwise than by way of mortgage in favour of the Government, a bank or a Co-operative Society, including a land mortgage bank; and

(ii) the condition that where the land transferred in an orchard, the transferee shall continue to maintain such land as an orchard; and

(iii) such other condition as may be prescribed.

(5) Any alienation effected or other act done in respect of any land in violation of the conditions specified in sub-section (4) shall be null and void; and the Revenue Divisional Officer shall resume the land after giving an opportunity to the persons affected of making a representation in this behalf.

(6) Notwithstanding anything in this section, the Government may;

(i) lease out any land vesting in them under this Act for such purposes and on terms and conditions as may be specified by them; or

(ii) reserve such land for any common use or benefit of the community."

Rule 10 of the Rules 1974 reads as follows:

10. Disposal of lands vested in the Government:-

(1) Subject to the reservations provided in this Act, land vested in the Government under the Act, shall be allotted by the Tahsildar for use as house sites for agricultural labourers, village artisans or other houseless poor persons; or shall be transferred to landless poor persons for purposes of agricultural or for purposes ancillary, thereto in the following manner:

(i) displaced tenants having no land;

(ii) landless poor persons; and

(iii) other poor agriculturists;

[Provided that in respect of each category of persons referred to in Section 14 of the Act and in this rule priority shall be given to persons locally residing and further from among whom priority shall be given to an ex-serviceman [and a widow of a person employed in the armed forces and who died in a war] belonging to that category:

Provided further that in respect of land surrendered by a co-operative society, firm or company and vesting in the Government, preference shall as far as may be practicable, be given to a landless poor person or other poor agriculturist who, as a shareholder of such co-operative society, or company or as a partner of such form was cultivating such land on the specified date:

Provided also that land surrendered in the Scheduled Areas shall not be allotted or transferred to person other than members of the Scheduled Tribes.

(2) The maximum extent of land which may be allotted to an individual or a family unit for use as house-site shall not exceed 0.056 hectares (five cents) and the maximum extent of land which may be transferred to an individual or a family unit for agricultural purposes or for purposes ancillary thereto shall not exceed 1.01 hectares (two and

a half acres) of wet land or 2.02 hectares (five acres) of dry land.

(3) The procedure followed for the allotment or assignment of Government lands for use as house-sites or for purposes of agriculture shall *mutatis mutandis* apply to the allotment or transfer of lands under this rule.

(4) The allotment or transfer of land shall be made by the Tahsildar concerned subject to the following conditions, namely:-

(a) The allottee or transferee shall pay to the Government the sum specified in sub-section (2) of Section 14 in fifteen equal annual installments from the date of allotment or transfer, each annual installment being payable before the 1st day of March of every year.

(b) Where the land transferred contains any fruit-bearing trees or permanent structures, the transferee shall also be liable to pay the value of such trees or structures, as calculated as per Rule 11, and it shall be recovered in fifteen equal installments along with the sum payable for the land under Clause (A).

(c) No installment of the sum payable shall be recovered in a Fasli year in which the land revenue on the land is remitted or suspended and such installment shall stand postponed by one Fasli year and the installment so postponed shall be recovered together with the installment of the succeeding year.

(d) The allottee or transferee, shall, in addition to the installment payable under this rule, be liable to pay the land revenue and other rates and taxes, if any payable on the land.

(e) Where the land is allotted for use as house site, the allottee shall utilize the same for construction of a house thereon within a period of two years from the date of allotment or such further period as the Tehasildar may permit.

(f) Where the land is transferred for purposes of agriculture or for purposes ancillary thereto, the land shall be cultivated personally by the transferee or any

of the members of his family or by hired labour under the supervision and control of himself or any member of his family.

(g) All lands allotted or transferred shall be heritable, but shall not be transferable, except by way of mortgage in favour of the Government, a Bank or a Co-operative Society, including a Land Mortgage Bank.

Explanation I: For the purposes of these rules, *"poor agriculturist"* means a person who or together with the members of his family unit in the aggregate does not own more than 1.01 hectares (2-1/2 acres) of wet land or 2.02 hectares (5 acres) of dry land and in computing the area owned by such person 0.405 hectares (one acre) of wet land shall be treated as equivalent to 0.809 hectares (2 acres) of dry land.

Explanation II: While transferring land for purposes of agriculture, the land owned by the transferee or any of the members of his family unit shall be taken into account, such that the land transferred to him under these rules together with the lands already owned by him or the members of family unit do not, in the aggregate, exceed the maximum extent of 1.01 hectares (2-1/2 acres) of wet land or 2.02 hectares (5 acres) of dry land.

(5) Where any person fails to pay the installment due or violates and of the conditions of allotment or transfer, the Revenue Divisional Officer, may after giving an opportunity to the person concerned of making a representation in this behalf within thirty days from the date of communication of a notice, pass an order forfeiting the amount already paid and resuming the land and also authorize any officers not below the rank of a Revenue Inspector to take possession of the land:

Provided that no such land shall be taken possession of until the seasonal crop on the ground is harvested.

(6) Against every order of forfeiture of the amount or resumption of the land passed by the Revenue Divisional Officer, an appeal shall lie to the District Collector within thirty days from the date of communication of the order.

14. The Act 9 of 1977 has been enacted to protect against transfers and alienations of assigned lands in favour of landless poor on the model of

legislation existing in regard to the Scheduled Tribes in the Scheduled areas, which prohibits alienation of lands and provides for restoration of such lands to the assignees, therefore, it has been decided to undertake legislation immediately to prohibit alienation of assigned lands to landless poor persons and to provide for punishment of purchasers of such lands.

Section 2. Definitions:- In this Act, unless the context otherwise requires,

2(i) "assigned land" means lands assigned by Government to the landless poor persons under the rules for the time being in force subject to the condition of non-alienation and includes land allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings; and the word "assigned" shall be construed accordingly:

Explanation:- A mortgage in favour of the following shall not be regarded as an alienation, namely:-

(i) the Central Government, or the State Government or any local authority;

(ii) any co-operative society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 and

(iii) any bank which includes,-

(a) the Agricultural Development Bank;

(b) the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934;

(c) the State Bank of India constituted under the State Bank of India Act, 1955;

(d) a subsidiary bank as defined in the State Bank of India Act (subsidiary Banks) Act, 1959; and

(e) a corresponding new bank constituted under Section 3 of the Banking companies (Acquisition and Transfer of Undertakings) Act, 1970;

(2) "government" means the State Government;

(3) "landless poor persons" means a person who owns an extent of land not more than 1.011715 hectares (two and half acres) of wet land or 2.023430 hectares (five acres) of dry land or such other extent of land as has been or maybe specified by the Government in this behalf from

time to time and who has no other means of livelihood.

Explanation:- For the purposes of computing the extent of land under this clause, 0.404686 hectares (one acre) of wet land shall be equal to 0.809362 hectares (two acres) of dry land;

(4) ……..

(5) …….

(6) "transfer" means any sale, gift, exchange, mortgage with or without possession, lese or any other transaction with assigned lands, not being a testamentary disposition and includes a charge on such property or a contract relating to assigned lands in respect of such sale, gift, exchange, mortgage, lease or other transaction.

Section 3. Prohibition of transfer assigned lands:-

(1) Where before or after the commencement of this Act any land has been assigned by the Government to a landless poor person for purpose of cultivation or as a house-site then, notwithstanding to the contrary in any other law for the time being in force or in the deed to transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

(2) No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage, exchange or otherwise.

(3) Any transfer or acquisition made in contravention of the provision of sub-section (1) or sub-section (2) shall be deemed to be null and void.

(4) The provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil court of any award or order of any other authority.

(5) Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house-site on the date of such commencement.

Section 4. Consequences of breach of provisions of Section 3:-

(1) If in any case, the District Collector or any other officer not below the rank of a [Mandal Revenue Officer] authorized by

him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of assigned land, he may, by order-

(a) take possession of the assigned land, after evicting the person in possession in such manner as may be prescribed; and

(b) restore the assigned land to the original assignee or his legal heir, or where it is not reasonably practicable to restore the land to such assignee or legal heir, resume the assigned land to Government for assignment to landless poor persons in accordance with the rules for the time being in force;

Provided that the assigned land shall not be so restored to the original assignee or his legal heir more than once, and in case the original assignee or his legal heir transfers the assigned land again after such restoration, it shall be resumed to the Government for assignment to any other landless poor person.

(2) Any order passed in Revision under Section 4-B and subject to such order, the decision in appeal under Section 4-A and subject to the said order in Revision and Appeal, any order passed under sub-section (i) shall be final and shall not be questioned in any court of law and no jurisdiction shall be granted by any Court in respect of any proceedings taken or about to be taken by any officer or authority or Government in pursuance of any powers conferred by or under this Act.

(3) For the purposes of this Section, where any assigned land is in possession of a person, other than the original assignee or his legal heir, it shall be presumed, until the contrary is proved, that there is a contravention of the provisions of sub-section (1) of Section 3.

Section 4-A. Appeal:-

(1) Any person aggrieved by an order passed by the Mandal Revenue Officer under sub-section (1) of Section 4, may within ninety days from the date of receipt by him of such order appeal to the Revenue Divisional Officer.

(2) Any person aggrieved by an order passed by the Revenue Divisional Officer under sub-section (1) of Section 4 may, within ninety days from the date of receipt by him of such

order appeal to the District Collector.

Section 4-B. Revision: -

(1) The District collector may in respect of any proceeding not being a proceeding covered by sub-section (2) of Section 4-A on an application made to him and the Government may in respect of any proceedings either *suo motu* or on an application made to them, call for and examine the record of any officer subordinate to him or them to satisfy himself or themselves as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order taken or passed therein, and if in any case, it appears to the District Collector or as the case may be to the Government that any such decision or order should be modified, annulled, reversed or remitted for re-consideration, they may pass orders accordingly:

Provided that every application for the exercise of the powers under this section shall be preferred within ninety days from the date on which the proceeding decision or order to which the application relates was communicated to the applicant.

(2) No order adversely affecting any person shall be passed under sub-section (1), unless such person has been given an opportunity of making his representation.

(3) The District Collector or the Government as the case may be, may also suspend the execution of the decision or order pending exercise of their power under sub-section (1).

Section 5. Prohibition of registration of assigned lands:-

Notwithstanding anything in the Registration Act, 1908 (C.A.16 of 1908) on or after the commencement of this Act, no registering officer shall accept for registration any document relating to the transfer of, or the creation of any interest in, any assigned land included in a list of assigned lands in the district which shall be prepared by the District Collector and furnished to the registering officer except after obtaining prior permission of the District Collector concerned for such registration.

Section 6…….

Section 7…….

Section 8.……

Section 9.……

Section 10. Act to override other laws:-

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or decree or order of a court, tribunal or other authority.

15. A perusal of Section 2(1) read with Section 3 of the Act 1977 goes to show that the assigned lands allotted/transferred in favour of landless poor, even in case of ceiling surplus lands, shall be treated as assigned lands and there is a total prohibition of the transfer of assigned lands, except by way of mortgage in favour of State or Central Government, Cooperative Central Bank, as the explanation to Section 2(1) explains that mortgage in their favour shall not be regarded as alienation and therefore, mortgage in favour of State/Central Government and Cooperative Central Bank shall not be treated as transfer within the meaning of Section 2(6). Therefore, any mortgage in their favour cannot be treated as violation of the provision of the Act 1977, as the mortgage not being a transfer is not prohibited. When the mortgage itself is not treated as transfer, even the mortgaged lands cannot be alienated in any redemption of the mortgage proceeding and it is the risk of the mortgagee to recover the mortgaged amount without any recourse to the alienation. Thus, the aims and objects of the Act 1977 read with aforesaid provisions go to show that the Act 1977 prohibits alienation permanently of the assigned lands in favour of landless poor whether they are ceiling surplus lands or Government lands or waste lands.

16. Insofar as the lands situated in the Scheduled areas are concerned there is total prohibition of alienation of the said lands except in favour of the Scheduled Tribes. Any such alienation in favour of non-scheduled tribe is null and void and there is total prohibition. Act 1977 also has been legislated on

similar lines imposing prohibition of alienation of the assigned lands of the landless poor permanently.

A perusal of Section 3(1) of the Act 1977 goes to show that the lands assigned by the Government in favour of the landless poor persons for the purpose of cultivation allotted/transferred even before the commencement of the Act 1977 is prohibited and even if there is any such transfer prior to the commencement of the Act, shall be deemed to have never been transferred and as such no right or title of the assigned land shall vest in the person acquiring the said land.

Under Section 3(5) of the Act 1977, the purchase of assigned lands in favour of landless poor by another landless poor in good faith and for valuable consideration prior to the commencement of the Act is exempted.

Under Section 4(3) of the Act 1977 where any land assigned in favour of the landless poor person is found in possession of another person, other than the original assignee or his legal heir,

it shall be presumed that there is a contravention of the provisions of the sub-section (1) of Section 3. The ceiling surplus land allotted/transferred under Section 14(4) of the Act 1973 is coupled with a condition prohibiting alienation of such lands permanently.

Merely because the Government calculated the sum at 50 times the land revenue payable in 15 annual installments under the Act 1973 and the Rules made thereunder, the character of the land is not changed but it still remains as assigned land. Under Section 14(2) of the Act 1973 the maximum amount payable by such landless poor in whose favour such land was allotted is only Rs.375/- per hectare in case of dry land and Rs.1,250/- per hectare in case of wetland.

2.02 hectares is equivalent to 5 acres and 1.01 hectares is equivalent to 2.5 acres. The Government abolished the collection of land revenue. The facts about the collection of amount at 50 times the land revenue are not furnished

and even if the amount is collected the character of such land allotted in favour of landless poor will not change as such the lands are not alienable.

17. As early as in 1984 the Hon'ble Justice K. Ramaswamy, as he then was, in **KAMMARI BALARAM v. A. BHOOM LINGAM**[2] held at Para 13 as follows:

> "Thus, the scheme of the Act (Act 1977) is a self-contained Code declaring the invalidity of the contract that never to have taken place and no right, title or interest having been acquired by the transferee from the landless poor of the Government assigned land. It is having overriding effect over the provisions contained in any other enactment. It may also be made clear that the Act was reserved for assent of the President of India, who gave his assent on 29th April, 1977 and the same has been published in the Andhra Pradesh Gazette on 30th April, 1977. Thus, the provisions contained in the Act have got overriding effect over provisions of the Indian Contract Act."

18. With regard to the character of the land assigned on collection of a sum calculated at 50 times the land revenue on such land, My learned Brother Justice V.V.S. Rao in **VEMULA SATYAVATHI v. DISTRICT COLLECTOR**[3] at Para 6 held as follows:

> "6. A reading of Section 14(4) and (5) of the Land Reforms Act and Rule 10 of the Land Reforms Rules together it becomes evident that even where the surplus land is assigned on collection of a sum calculated at 50 times the land revenue on such land and the character of the land is not changed, it still remains assigned land. In an unreported judgment in *Patakamuru Damodar Prasad v. Government of A.P.*, (Writ Petition No.8520 of 2002, dated 09.07.2002) reported in 2002 (6) ALD 67, I considered the effect of Section 14 of the Land Reforms Act and Rule 10 of the Land Reforms Rules on right of assignee to transfer land to third parties and held as under:
>
> > "Sub-rule (2) prescribed the maximum extent of land that can be assigned, and sub-rule (3) lays down the procedure to be followed for allotment or assignment of Government lands for use of house-sites or for purposes of agriculture shall *mutatis mutandis* apply to the allotment or transfer of lands under the Rules. Therefore, wherever the Act and the Rules are silent, the revenue officials have to the

> BSO 15, which deals with allotment/assignment of agricultural land and/or BSO 21, which deals with allotment of house-sites…… The Clause (2) of Para 2 of BSO 15 defined "landless poor person" as one who owns not more that two and half acres of wet or five acres of dry land and is also poor. By the very definition, a person who is not poor, but is landless, is not eligible for assignment of the land. Indeed Rule 10(I) of the Rules obliges the Thasildar to allot surplus land to displaced tenants having no land, landless poor persons, and other poor agriculturists in that order. A person, therefore, must be poor before seeking assignment of surplus land and also must be landless person. In this background, reliance placed by the learned Counsel for the petitioners on Rule 10 of the Rules in support of his contention that BSO 15 has no application, is misconceived and cannot be accepted."

My learned brother Justice V.V.S. Rao also held in **DAMMALAPATI RAMALINGAM v. DISTRICT COLLECTOR, KHAMMAM DISTRICT**[4] that Section 10 of the Act 9of 1977 gives overriding effect to it over all other laws. Therefore, even if there is some other law, which enables the revenue authorities to accept relinquishment by the registered holders, but still the provisions of the Act cannot be ignored.

19. A Full Bench of this Court in **DHARMA REDDY V. SUB-COLLECTOR, BODHAN**[5] held that the manifest intention of the Legislature is to save the landless poor persons from the clutches of the rich and the resourceful, who deprived them of the precious title to the small plots of land assigned to them by the Government, which alone provided them occupation and the source of livelihood and

the provisions of Act 1977 have retrospective operation. Section 3(1) of the Act not only prohibits transfer of the assigned land on or after the commencement of the Act, but also declares retrospectively that all transfers of such assigned land which took place prior to coming into force of the Act shall also be null and void, *non est* in the eye of law, and no right or

title in such assigned land shall vest in any person acquiring the land by such transfer.

20. The contentions of the learned counsel for the petitioners that the restriction imposed under Section 14(4) of the Act 1973 prohibiting alienation in respect of allotted/transferred land in favour of landless poor and such alienation cannot be permanent in nature; therefore, Section 14(5) cannot be invoked, cannot be accepted as Section 14(4) and (5) read with Rule 10 of the Rules 1974 permanently prohibits the alienation. The imposing of condition to pay 50 times the land revenue on such land in 15 annual installments is to make the allottee/transferee cultivate the said land and for violation of said condition it is open for the Revenue Divisional Officer to resume the land under the provisions of Act 1973 read with BSO. However, after the Act 1973, the Act 1977 has been enacted, which prohibits transfer of the assigned lands including ceiling surplus lands allotted/transferred in favour of landless poor. Once the ceiling surplus lands allotted/transferred in favour of the landless poor are brought within the definition of assigned lands under Section 2(1) of the Act 1977, it cannot be said that the competent authority under the Act 1977 is not entitled to invoke the provisions of the Act 1977. I am of the opinion that in view of Section 10 of the Act 1977 having overriding effect on other laws, the Act 1977 empowers the competent authority to resume the said lands.

21. In view of the aforesaid facts and circumstances of the case,
it has to be held that the ceiling surplus agricultural lands transferred in favour of the landless poor containing the condition that the lands are not alienable but inheritable permanently prohibits the transferee to alienate the said lands either under the provisions of the Act 1973 or under the provisions of the Act 1977. The conditional transfer in favour of the landless poor transferring the agricultural lands on payment of 50 times the land revenue,

subject to maximum of Rs.375/- in case of dry land and Rs.1,025/- in case of wet land per hectare, to be collected in 15 annual installments, imposing a condition not to alienate such lands, even after the payment of the said meager sum, the prohibition of transfer continues. The Act 1977 prohibits transfer of such assigned lands permanently, if a condition is imposed while transfer that such lands are not alienable. For violation of the condition imposed while transferring the lands in favour of the landless poor in respect of ceiling surplus lands or any other lands with such condition prohibiting the transfer, the resumption can be under the provisions of the Act 1973 or under the provisions of the Act 1977 also. The Act 1977 itself has been enacted to protect such lands and the provisions of the Act 1977 have overriding effect over other laws including the Act 1973, as in the case of the lands situated in the Andhra Pradesh scheduled areas. Accordingly, all the questions are answered against the petitioners.

The writ petitions are accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

December 19, 2007
Note: LR Copy to be marked
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[1] AIR 1984 SC 1151
[2] 1984 (1) AWR 50
[3] 2003 (3) ALD 415
[4] 2006 (6) ALT 299
[5] 1987 (1) ALT FB 124